



# Research Briefing **The Wales Bill 2016**

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**National Assembly for Wales**  
Research Service

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## Research Briefing

# **The Wales Bill 2016**

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The Wales Bill was introduced in the House of Commons on 7 June 2016 and accompanied by a statement by the Secretary of State for Wales, Alun Cairns MP. It will receive its second reading in the House of Commons on Tuesday 14 June 2016. This paper provides some background to the Bill; outlines the contents and summarises early reaction to the Bill.

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# 1. Introduction

The **Wales Bill** was introduced in the House of Commons on 7 June 2016 and accompanied by a **statement by the Secretary of State for Wales, Alun Cairns MP**. It will receive its second reading in the House of Commons on Tuesday 14 June 2016. This paper provides some background to the Bill; outlines the contents and summarises early reaction to the Bill following the First Minister's statement in Plenary.

## 2. The Draft Bill

### Reserved Powers

There was much discussion in the Fourth Assembly (prompted in part by the Scottish independence referendum) about the shortcomings of the current devolution settlement and how it might be improved. In particular there was a growing call for a reserved powers model under which those powers which are reserved to the UK Parliament are set out in legislation, with all other powers being devolved to the Assembly. Currently, the powers devolved to Wales are conferred under 21 headings in Schedule 7 to the *Government of Wales Act 2006*.

The UK Government published a **draft Wales Bill** for consultation in October 2015 that set out a new devolution framework. The intention was to create a lasting settlement that would provide greater clarity and certainty about the boundaries of Wales's powers.

A key feature of the draft Bill was a new 'reserved powers' model of devolution which clearly set out the subject areas outside the Assembly's legislative competence. The **second report of the Silk Commission** (2014) on devolution in Wales recommended adopting such a model and concluded that it would be clearer and simpler to administer than the current arrangement. It would also help to prevent further referrals of Assembly legislation to the **Supreme Court for a ruling on competence**, as happened on three occasions since the Assembly acquired full legislative powers in 2011.

### Scrutiny by the Constitutional and Legislative Affairs Committee

The draft Bill was **scrutinised by the Constitutional and Legislative Affairs Committee (CLAC)** of the Assembly in autumn 2015.

The draft Bill contained specific proposals where much of the evidence received was positive, such as providing in law for the **Assembly to be permanent**, the removal of unnecessary controls over the **composition of Assembly committees**, the cessation of **involvement of UK ministers in Assembly proceedings**, placing the **Sewel Convention** on a legislative basis, and the **transfer of powers** concerning energy, transport and elections. However, many issues about the contents of the draft Bill were raised in written and oral evidence to CLAC.

In its report the CLAC stated that "the weight of evidence received overwhelmingly opposes the way in which the draft Bill delineates the boundary of the Assembly's legislative competence" and that it "is not yet in a state to command consensus". It did not believe that the Bill should proceed until it is significantly amended.

It believed that if the UK Government intended to proceed to its stated timetable the draft Bill should be amended to include:

- the removal of the **necessity test** or its replacement by a test based on appropriateness;
- a system for requiring **Minister of the Crown consents** that reflects the model in the *Scotland Act 1998*;

- a significant **reduction in the number and extent of specific reservations** and restrictions consistent with a mature, effective and accountable legislature that is to acquire income tax powers through the same Bill;
- a **distinct jurisdiction** in which Welsh Acts extend only to Wales;
- a system in which **Welsh Acts modify England and Wales law as appropriate** for reasonable enforcement;
- a clear commitment that a **lingual consolidation** be carried out during the current Parliament.

The CLAC Report was debated **in Plenary** on **13 January 2016**. A series of motions were put down on each of CLAC's recommendations and all received the **unanimous support** of the Assembly.

### Scrutiny by the Welsh Affairs Select Committee

The House of Commons Select Committee on Welsh Affairs also scrutinised the draft Bill. The **report** they produced, on 28 February 2016, was critical of the process saying that some of the decisions taken in the preparation of the draft Bill may hinder its workability. For example, the decision to amend the *Government of Wales Act 2006*, rather than replace it, means that the proposed legislation is not freestanding. It argued that more extensive discussions could have taken place prior to the draft Bill being published. It stated:

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*Whilst this pre-legislative process has flushed out views, it has also made it apparent that the final Bill will be significantly different to that which we have been scrutinising. That is wrong. Whilst changes and improvements are what this process seeks to provide, the weight of the evidence we received has meant we have had to focus on fundamental principles of the draft Bill rather than the specifics of the text. The Government should have focused its effort on resolving these matters of principle, before proceeding with a draft Bill. This could have been achieved through a consultation on its proposals which would also have aired these issues.*

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The report concluded by recommending that the Secretary of State pause in order to reflect on the recommendations. These required him to look again at the necessity tests, the list of reservations, the matter of ministerial consent and also to continue to review the issue of a separate or distinct Welsh jurisdiction.

### The Secretary of State's Statement

On 29 February 2016 the then Secretary of State for Wales, Stephen Crabb MP, made a **statement** in which he announced that the introduction of the Wales Bill would be paused until the summer and identified areas which would change in the light of evidence received by the two committees.

He announced his intention to **remove the necessity test** rather than replace it. He said:

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*Given that a key aim is to reduce complexity, removing the "necessity test" will cut the constitutional red tape which risks fettering the ability of the Assembly to modify the law to enforce its legislation for which it is responsible.*

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He also agreed to **reduce the number of reservations** and instructed Wales Office officials to work with UK Cabinet colleagues to draw up a revised list.

In relation to **Ministerial consent** he stated his intention to remove the general restriction on the Assembly modifying a Minister of the Crown function in devolved areas, and to review each of the functions with a view to devolving as many as possible.

The Secretary of State reiterated his opposition to a **separate Welsh jurisdiction** but announced the creation of a working group – with the Ministry of Justice, the Lord Chief Justice’s office, and the Welsh Government – to consider what distinct arrangements are required to recognise Wales’s needs within the England and Wales jurisdiction when the reserved powers model is implemented.

On 19 March Alun Cairns MP replaced Stephen Crabb MP as Secretary of State for Wales.

## The Welsh Government’s Alternative Bill

On Monday 7 March the First Minister issued a **Written Statement** and published the *Government and Laws of Wales Bill* (‘the alternative bill’) along with **an Explanatory Summary**. The statement said that the Welsh Government was publishing the alternative Bill ‘as a constructive contribution to the development of Welsh devolution, and to assist the Secretary of State and the UK Parliament when they consider how the settlement should be improved’.

The alternative bill is a **consolidating bill** so it would re-enact much of what is in the *Government of Wales Act 2006*, for example in relation to the structure of the Assembly. Other provisions have been included from what is now the *Scotland Act 2016*, Assembly Measures and the draft Wales Bill and there are some new provisions. Clause 1 would re-name the Assembly as a Parliament.

The Bill would provide for an immediate change from a conferred powers model of to a **reserved powers** model. The Explanatory Summary states that the list of **reservations** includes those matters **essential to the UK’s political, economic and social union**. Thus provisions supporting the UK’s internal market, or social security are reserved matters.

However, it also provides for devolution in the longer term of **policing, the administration of justice, criminal law, and family law** all of which are ‘**deferred matters**’ until the ‘**deferred transfer date**’ of **1 March 2026**.

The alternative bill would provide for **the immediate creation** of a **distinct Welsh legal jurisdiction**, separating the laws of England from the laws of Wales. The Explanatory Summary states:

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*The Welsh Government first initiated the debate about the Welsh jurisdiction in 2011. At that point, we concluded that the jurisdiction should develop organically over time. But our detailed work on the reserved powers model for Wales has made clear that creating such a model within a joint jurisdiction risks creating new complexity and uncertainty. Therefore, as we argued in our evidence to CLAC [...] we have concluded that a Welsh jurisdiction is the right way forward in line with the principles set out above.*

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The alternative bill provides for some new **restrictions** on the powers of the proposed Welsh Parliament—in three ways:

- the Welsh Parliament’s powers would be **exercisable only in relation to Wales**. So, by establishing a distinct Welsh jurisdiction, the ability for Welsh laws to apply in some respects in England is removed. As with Scotland, changes in the law of England consequential upon Acts of the Welsh Parliament made for Wales would be made by the UK Government by regulations.
- Some reduction of power is necessary in order to achieve the logical and clear reservation of **employment rights and duties** which is needed to underpin the UK’s internal labour market.
- Thirdly, the Welsh Parliament would not be able to modify the functions or constitutions of **listed reserved authorities** without the Secretary of State’s consent, or modify the law on reserved matters unless doing so is necessary for a devolved purpose.



The alternative bill is neither an Assembly Bill nor a Westminster Bill but provides a possible model of how changes to the Welsh devolution settlement could be made.

## UK Government's response to the Welsh Affairs Committee

The UK Government published its **response to the House of Commons Welsh Affairs Committee's Report** on the Draft Bill on the same day as the Bill itself was published. It contains some pointers regarding the Bill's future implementation.

In respect of the issue of **a distinct jurisdiction** it asserts that "We consider the current, single legal jurisdiction to be fit for purpose." However, it continues:

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*The Government does however recognise the need for the distinctiveness of Wales to be fully reflected within the single legal jurisdiction. The Bill confirms in statute the existence of a body of Welsh law made by the National Assembly for Wales and Welsh Ministers which forms part of the law of England and Wales.*

*Welsh laws should also feed through into efficient and effective arrangements for the administration of justice in Wales, from matters such as amending court rules to judicial training.*

*The Government has therefore set up a working group of officials, including representatives from the Lord Chief Justice's Office, to examine these arrangements in detail and recommend how we could improve them. **This work will move forward alongside the Bill**, [Research Service emphasis] and the group will engage with the Welsh Government in making recommendations to improve the current system.*

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The Secretary of State for Wales published details of this working group on the same day. The Group will be chaired by **Scott McPherson, Director of Law, Rights and International at the Ministry of Justice**. It will include representatives from the Ministry of Justice, Wales Office, Cabinet Office, Home Office, Attorney General's Office / Crown Prosecution Service, the Judicial Office and the Welsh Government.

Its **Terms of Reference** include:

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### **Purpose**

*To consider the administrative and practical implications for the justice system of the emerging body of Welsh law made by the National Assembly for Wales and recommend improvements in administrative arrangements and procedures to ensure Assembly laws are fully embedded in the justice system.*

*To report to Ministers by autumn 2016, including a proposed action plan to implement recommendations made.*

### **Scope**

*In identifying improvements that should be made, the group will consider:*

*the implications for justice in Wales of moving to the reserved powers model of devolution as set out in the Wales Bill*

*the constitutional and practical implications of diverging Welsh laws within the England and Wales justice system*

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*the need for distinctive justice arrangements to reflect the emerging body of law made by the Assembly.*

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The response states that the UK Government intends the new reserved powers model to provide a clear boundary between devolved and reserved powers. It recognises, however, that the existing **general restriction prohibiting the Assembly from legislating on remaining Minister of the Crown functions** (so called “pre-commencement” functions) in devolved areas, without consent, cuts across this key principle. It states:

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*The Government is, therefore, removing this general restriction in the Wales Bill. The Bill lists those functions which will continue to be exercised concurrently or jointly between Welsh Ministers and Ministers of the Crown, and the few remaining functions which a Minister of the Crown will continue to exercise, and which cannot be modified by Assembly legislation without consent. All other functions in devolved areas will be transferred by Order to Welsh Ministers. The Welsh Ministers are required to consult the appropriate UK Minister if an Assembly Bill includes provision to amend a Minister of the Crown function not transferred by provision in the Bill nor transferred to Welsh Ministers by subsequent Order.*

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In reply to the Committee’s recommendation on the **timing of Ministerial Consents**, the response states:

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*The Government agrees the need for a clear procedure to obtain Ministerial consents. We believe however that the procedure is administrative, and would be best set out in guidance rather than on the face of the Wales Bill. The Government intends to publish guidance to UK Government Department on working with the new reserved powers model for Wales. We will do so closer to the time the new reserved powers model is implemented, and will consult the Welsh Government and Assembly Commission in preparing it. The guidance will include a deadline of 60 working days by when consent must be granted or refused. The guidance will also require the Government to give reasons where consent is refused.*

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### 3. The Wales Bill 2016

The Wales Bill (“the Bill”) was introduced on 7 June 2016. The Bill is not consolidating but rather amends other Acts of Parliament, including the *Government of Wales Act 2006*. The structure of the Bill is set out in Annex 1. Set out below.

#### Part 1 of the Bill

**Part 1** of the Bill deals with **constitutional arrangements**. **Clause 1** amends the *Government of Wales Act 2006* to assert the **permanence** of the Assembly and Welsh Government, as did the draft Bill. However, a proposed sub-section explains the purpose of the clause: to “signify the commitment of the Parliament and Government of the United Kingdom to the Assembly and the Welsh Government”. A final sub-section states:

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*In view of that commitment it is declared that the Assembly and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum [Research Service emphasis].*

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**Clause 2** amends the *Government of Wales Act 2006* to include the words “But it is recognised that the Parliament of the United Kingdom **will not normally legislate with regard to devolved matters without the consent of the Assembly**”, thereby placing the existing convention in statute.

**Clause 3** relates to the **legislative competence** of the Assembly. Clause 3(1) replaces current section 108 of the *Government of Wales Act 2006* with a new section 108A. The new section sets out the limits on the legislative competence of the Assembly by reference to **two new Schedules, 7A and 7B**, that replace Schedule 7 to *Government of Wales Act 2006* listing **reserved matters and general restrictions**.

The Bill enables the Assembly to **modify the criminal law** for a devolved purpose, except for a short list of offences and core elements of the criminal law. For **private law, the necessity test has been removed**. These changes provide the Assembly with the means to modify the criminal/private law for a devolved purpose in order to help enforce its legislation.

The Bill retains the **test of necessity** in the two other circumstances. First, when the Assembly legislates in relation to England. Clause 3 of the Bill enables the Assembly to legislate in relation to England if the provision is **ancillary to a provision of an Act of the Assembly** (or Assembly Measure), or to a devolved provision of an Act of Parliament, subject to the “necessity test”: that an Assembly provision can have *no greater effect otherwise than in relation to Wales than is necessary to give effect to the purpose of that provision*.

Second, when the Assembly **modifies the law on reserved matters**, Paragraph 1(1) of new Schedule 7B (Schedule 2 to the Bill) prevents a provision in an Assembly Act from modifying the law on reserved matters. The law on reserved matters is defined in paragraph 1(2) as any UK Parliament enactment or rule of common law, the subject matters of which is a reserved matter in new Schedule 7A. Paragraph 2 sets out an **exception** to this, so that the Assembly can modify the law on reserved matters if the modification is **ancillary to a provision with a devolved purpose and has no greater effect on reserved matters than is necessary to give effect to the purpose of that provision**.

**Clause 4** defines a “Wales public authority” and inserts a new Schedule 9A into the *Government of Wales Act 2006*. Wales public authorities’ functions are exercisable **only in relation to Wales** and are wholly or mainly functions that do not relate to reserved matters. The Schedule includes a list of Wales public authorities to provide clarity as to the public authorities which are devolved, and includes a power to amend the list in future by an Order in Council approved by the Assembly and both Houses of Parliament.

**Clauses 5** and **6** provide for Welsh Ministers to have powers over elections.

**Clause 7:** amends the *Representation of the People Act 1983* in relation to the procedure for applications to the register of electors, to provide for certain functions of the Secretary of State relating to the **Digital Service**, to be exercisable by the **Welsh Ministers concurrently** with a Minister of the Crown.

**Clause 8** inserts new sections 111A and 111B into the *Government of Wales Act 2006* to require certain types of **electoral legislation** to be passed by a **two-thirds majority** of the Assembly.

These specified matters are, in relation to elections to the Assembly:

- the **franchise** for those elections,
- the **system** by which Assembly members are returned,
- the specification or **number of constituencies and regions** or other such areas and

– the **numbers of members** to be returned in each constituency or region or other such areas.

In addition, a provision **changing the name of the Assembly** would also relate to a protected subject-matter and require a two-thirds majority before it could be passed.

**Clause 9** amends sections 111 and 112 of the *Government of Wales Act 2006* to reflect the new processes required as a result of the requirements for a two-thirds majority. The Bill requires the standing orders to provide for a Bill that has been passed to be reconsidered if the Supreme Court decides that the Presiding Officer has incorrectly certified whether a provision relates to a protected subject-matter.

**Clause 10** provides for **justice impact assessments** to be made in relation to Assembly Bills. It does that by requiring the Assembly's standing orders to include provision requiring the person in charge of an Assembly Bill to make a written statement setting out the potential impact of the Bill's provisions on the justice system in England and Wales. The standing orders must prescribe the form and manner in which the assessment is to be made and the assessment must be published.

**Clause 11** provides that the **Presiding Officer**, rather than the Clerk of the Assembly, should **submit Assembly legislation for Royal Assent**. It also provides that the Presiding Officer rather than the Clerk of the Assembly should be notified when a Bill is the subject of a Supreme Court reference and when the Attorney General or Counsel General do not intend to make a reference.

**Clause 12** Financial control, accounts and audit: This section provides that provision shall be made by or under an **Act of the Assembly ("Welsh legislation") in relation to financial control, accounts and audit**. This replaces previous arrangements for financial controls in the *Government of Wales Act 2006*.

**Clause 13** repeals section 29 of the *Government of Wales Act 2006* to **remove the restrictions on the composition of committees** and allows for them to be amended by changes to Assembly standing orders.

**Clause 14** repeals sections 32 and 33 of the *Government of Wales Act 2006*. The repeal of section 32 **removes the entitlement of the Secretary of State for Wales to participate in Assembly proceedings**. The repeal of section 33 removes the **requirement for the Secretary of State to attend the Assembly** as part of the process of consultation on the UK Government's legislative programme.

**Clause 15** inserts a new section 150A into the *Government of Wales Act 2006* ensure that references in other legislation to the Assembly and other bodies are **automatically amended** if the Assembly exercises its power to **change its name**.

**Clause 16** amends the *Wales Act 2014* to **remove the requirement for there to be a referendum** in advance of the devolution of a portion of **income tax**.

**Clause 17** amends the *Government of Wales Act 2006* to confer **common law type powers on Welsh Ministers**; these powers are described as **executive functions of Her Majesty** and they will be exercisable both in relation to devolved functions and executive functions conferred on Welsh Ministers exercisable in reserved areas. Subsection (5) defines what is meant by an executive function; this does not include any prerogative functions.

**Clause 18** gives Welsh Ministers an **automatic right to make regulations** under section 2(2) of the **European Communities Act 1972 implementing EU law**. This right applies to matters that are within the legislative competence of the Assembly. Such exercise of the powers by Welsh Ministers

will no longer be conditional on prior designation in an Order in Council prepared by the UK Government.

Functions conferred by UK legislation in devolved areas can be transferred to Welsh Ministers by an Order made under s.58 of the *Government of Wales Act 2006*. **Clause 19**, subsection (1) modifies s.58 by enabling an order to specify that a function may also be **exercised jointly**, as well as concurrently, by a **Minister of the Crown and Welsh Ministers**. Transfers of functions orders can also specify that functions exercisable by Welsh Ministers may require agreement of, or consultation with a Minister of the Crown. Subsection (2) modifies provision in Schedule 3 of *Government of Wales Act 2006* by removing the reference to cross-border bodies and English border areas.

Subsection (3) inserts a new Schedule 3A into the *Government of Wales Act 2006* which lists all those **powers which are exercised concurrently or jointly by Ministers of the Crown and Welsh Ministers**. These powers have already been transferred by transfer of functions orders made under the powers listed in s.58 (2A)(c) inserted by clause 19. This Schedule may be added to by subsequent Orders, if they include shared powers so that a comprehensive list of such powers is easily accessible

**Clause 20** makes **further modifications to the power at s.58 to make transfer of functions orders**.

**Clause 21** repeals section 63 of the *Government of Wales Act 2006* (consultation about cross-border bodies). The section placed a **duty on Ministers of the Crown to consult Welsh Ministers before exercising certain functions in relation to cross-border bodies**. The expression 'cross-border body' is not used in the reserved powers model introduced by the Bill. Public authorities with functions exercisable in England as well as Wales will generally be 'reserved authorities' under the new structure.

## **Part 2: Legislative and executive competence: further provision**

**Clauses 22 to 24** make provisions which devolve powers to the Welsh Ministers over onshore petroleum.

**Clause 25** makes provisions which devolve powers to the Welsh Ministers over roads, speed limits, pedestrian crossings and traffic signs.

**Clause 26** makes provisions which devolve powers over service registration and Traffic Commissioners to the Welsh Ministers.

**Clause 27** makes provisions which transfer certain functions about taxis, to Welsh Ministers.

**Clause 28 -35** relate to the transfer of executive functions in relation to Welsh harbours.

**Clause 36 -39** provide for the devolution of planning consent for generating stations with 350MW capacity or less to the Welsh Ministers.

**Clause 40** amends section 152(2) of the *Equalities Act 2010* (the 2010 Act). The relevant part of this section sets out the process Welsh Ministers must follow when exercising a power to amend the list of Welsh public authorities, set out in Part 2 of Schedule 19 of the 2010 Act, which are subject to the public sector equality duty. Welsh Ministers will no longer have to obtain the consent of a Minister of the Crown before making an order amending the list, but instead must inform such a Minister after any amendment to Schedule 19.

**Clause 41** amends the arrangements for the commencement of Part 1 of the 2010 Act in Wales (socio-economic inequalities). It also amends the powers of the Welsh Ministers where they wish to amend section 1 of the 2010 Act. Part 1, which enables the Welsh Ministers to impose the socio-economic duty on public bodies exercising devolved or mainly devolved functions, is already

devolved, but there had not until now been an available mechanism for the Welsh Ministers to commence the provision as it relates to those bodies.

**Clause 42** implements the recommendation of the Silk Commission that the existing executive responsibilities for marine licensing in the Welsh inshore region should be extended to the Welsh offshore region. The amendments made by clause 26 provide for Welsh Ministers to exercise functions relating to marine licensing in the Welsh offshore region.

**Clause 43** appoints the Welsh Ministers as appropriate authority in the Welsh offshore region allowing them to designate areas as marine conservation zones in that region pursuant to *Part 5 (Nature Conservation) of the Marine and Coastal Access Act 2009 (the 2009 Act)*.

Legislative competence for **sewerage** was not previously conferred on the Assembly, and will be devolved to the extent set out in reservations 90 and 91 of the proposed Schedule 7A. **Clause 44** amends section 114 of *Government of Wales Act 2006* by adding **a new intervention power over the competence of the Assembly to pass an Act of the Assembly relating to sewerage**. This intervention power enables the Secretary of State to make an order prohibiting the Presiding Officer from submitting a Bill for Royal Assent where the Secretary of State has reasonable grounds to believe that the Bill, if it became an Act of the Assembly in that form, might have a serious **adverse impact on sewerage services in England or sewerage systems in England**. This intervention power is similar to one already held by the Secretary of State in relation to the devolution of matters relating to water.

The regulation of buildings and building work is a reserved matter. However functions under the *Building Act 1984* to make building regulations and associated matters have been transferred to the Welsh Ministers by an order in 2009 that came into force in 2011. An **exclusion** from the transfer was made in relation to "**excepted energy buildings**"; that is buildings forming part of energy infrastructure. This **Clause 45 removes this exclusion** by making the necessary provision for the transfer of functions under the *Building Act 1984* for that category of buildings.

**Clause 46** creates a **duty for the Secretary of State to consult Welsh Ministers** before establishing or amending a **renewable energy incentive scheme**. A renewable energy incentive scheme is defined and includes the Renewable Heat Incentive, Renewables Obligation, Feed-in Tariff and Contracts for Difference.

### Part 3: Miscellaneous

**Clause 47** enables the **Office of Budget Responsibility to obtain such Welsh information** as it may reasonably require to fulfil its statutory duty. This information will be used to produce forecasts and analysis of the economy and the public finances.

Subsection (1) of **Clause 48** amends section 37 of *Government of Wales Act 2006*, which gives the Assembly power to require persons to attend its proceedings to give evidence or to produce documents. A new subsection (6A) is inserted in section 37 to **give the Assembly power to impose such requirements in connection with the discharge of the functions of the Gas and Electricity Markets Authority** in relation to Wales.

**Clause 49** provides that where a coal operator wants to mine in Wales, it must seek the **approval of the Welsh Ministers** as part of its application for a licence to do so.

**Clause 50** amends section 1 of the *Communications Act 2002* to provide that the **Welsh Ministers shall appoint one member of Ofcom** and, before doing so, they must consult the Secretary of State. Subsection (4) also amends section 1(5) to ensure that the member appointed by the Welsh Ministers is involved in the appointment of any executive members of Ofcom.

## Part 4: General

**Clauses 51-53** and Schedules 5 and 6 deal with consequential provision, minor and consequential amendments, transitional provisions and commencement. Clause 51 gives the Secretary of State a power to amend, repeal, revoke or otherwise modify enactments contained in primary legislation. The power extends to Assembly Acts and Measures but, in such circumstances, the exercise of that power requires approval of the draft statutory instrument containing it by both Houses of Parliament but not the Assembly.

### 4. The First Minister's Statement

On 8 June 2016 **the First Minister** made a statement on the Wales Bill in Plenary. He described the new Bill as "far from perfect" but that it is better than the previous draft. He explained:

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*One of the biggest problems with the earlier draft Bill arose from the provisions recasting the conferred-powers model into a reserved-powers model. The UK Government had argued that protecting the joint jurisdiction of England and Wales within the new model required the imposition of new restrictions on the Assembly's legislative competence. This was an unacceptable and unworkable row-back of existing competence, which greatly increased complexity and uncertainty in the Assembly's powers. The new Bill is a significant improvement, and the Assembly will have extensive powers to modify the private and criminal law in relation to matters within its competence. These provisions still need considerable further detailed work to achieve some degree of consistency, coherence and overall workability, but they do represent positive progress.*

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However, he added that the revised Bill makes clear that, over time, the divergence of the law applying in Wales and the law applying in England will continue to grow, to the point where a distinct or separate Welsh jurisdiction is inevitable. He stated:

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*I'll continue to argue that this issue must be addressed in this Bill if it is to be at all credible as a long-term settlement for Wales. Now, if the UK Government does not see its way clear in this Bill to a complete resolution, it should put in place, at least, arrangements that pave the way for a longer-term solution.*

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Other areas of improvement he identified were the reduction of UK Government Ministers' consents required for Assembly Bills. While he welcomed this, he warned that there was still "considerable complexity, and further work is needed before it will be possible to say whether the overall outcome is acceptable and workable".

The First Minister also said there had been progress in reducing the number and scope of reservations, but the Welsh Government would be pressing for amendments to remove several that remain, including, for example, the community infrastructure levy and alcohol licensing. He also said that the Bill's provisions on water "are unacceptable as they stand".

He reiterated his belief that policing should be devolved and, replying to a question later in the debate, said that "unless there is some movement on the jurisdiction or policing, this settlement is a step forward, but it's not durable and it's not sustainable".

The Bill removes the referendum provisions in the *Wales Act 2014*, with the effect that the Treasury would be able, by Order, to commence income tax devolution without the consent of the Assembly or Welsh Ministers. The First Minister stated:

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*I have made it clear that I will not be able to support income tax devolution without a clear overall fiscal framework agreed by both Governments, and that this agreement will be a precondition of supporting a legislative consent motion for the Bill.*

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Plaid Cymru Leader, **Leanne Wood** pressed the First Minister on the significance of the provisions on Justice Impact Assessments, noting that neither the Scottish nor Northern Ireland Acts had such provisions. She asked:

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*While this section might seem harmless on the face of the Bill, we have concerns that this section could act as a block on the Assembly's legislative powers. How can we make sure that this is not a watering-down of the necessity tests, and will not act as a blocking mechanism against laws that are made here?*

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The First Minister replied:

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*[...] the justice impact tests are similar, to my mind—I'm not arguing in favour of them—to regulatory impact assessments where we pass a law and we say, 'Well this is the effect that it will have on the courts'. That's it. There is nothing else that they could be possibly used for. They're not grounds for some kind of Westminster veto over Welsh law. It would be a document that would need to be produced, but nothing further could come of it. [...] I can't see any process—whereby the UK Government could then use a justice impact assessment it didn't agree with in order to prevent Welsh law being put onto the statute book.*

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**Andrew R.T.Davies**, Leader of the Welsh Conservatives, welcomed the Bill as an improvement on the Draft Bill and cautioned the First Minister that his desire to see policing devolved “shouldn't act as a roadblock to find a consensus for this Bill to actually proceed”. He also stated:

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*I agree entirely with the fiscal framework that the First Minister has touched on in his statement. That does need to be put in place to make sure that the transition on income tax powers for any future Welsh Government does need to be comprehensive, does need to give reassurance and, above all, does need to make sure that Wales is not left out of pocket.*

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The Leader of the UKIP Group, **Neil Hamilton** said that his group gave the Bill a “cautious welcome”. However, he raised the question of the repeal of the provision requiring a referendum before introducing income tax powers with the First Minister:

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*Your statement says that you object to these powers being devolved without the consent of the Assembly or Welsh Ministers and, hence, being imposed by Treasury Ministers. Well, I agree with that to this extent: that if there was to be no referendum then I certainly think that the Welsh Assembly ought to be allowed to make that decision. But I see no reason why the provision, which is in the current law, to consult the Welsh people should not be activated. That was the promise that was given before the last Wales Act was given the Royal Assent. This is now a breach of faith with the Welsh people.*

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# Annex 1

## Part 1

### *Constitutional Arrangements*

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1 Permanence of the National Assembly for Wales and Welsh Government

*Convention about Parliament legislating on devolved matters*

2 Convention about Parliament legislating on devolved matters

*Legislative competence*

3 Legislative competence

4 Wales public authorities

*Elections*

5 Power to make provision about elections

6 Timing of elections

7 Electoral registration: the digital service

*Other provision about legislation by the Assembly*

8 Super-majority requirement for certain legislation

9 Super-majority requirement: amendments relating to procedure etc

10 Introduction of Bills: justice impact assessment

11 Submission of Bills for Royal Assent: role of Presiding Officer

*Other provision about the Assembly*

12 Financial control, accounts and audit

13 Composition of Assembly committees

14 Assembly proceedings: participation by UK Ministers etc

15 Change of name of the Assembly etc: translation of references

16 Welsh rates of income tax: removal of referendum requirement

*Executive competence*

17 Functions of Welsh Ministers

18 Implementation of EU law

19 Transfer of Ministerial functions

20 Transferred Ministerial functions

21 Consultation about cross-border bodies

## Part 2

### Legislative and executive competence: further provision

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#### *Onshore petroleum*

22 Onshore petroleum licensing

23 Onshore petroleum: existing licences

24 Onshore petroleum: right to use deep-level land in Wales

#### *Road transport*

25 Roads: speed limits, pedestrian crossings and traffic signs

26 Bus service registration and traffic commissioners

27 Taxis: transfer of functions to Welsh Ministers

#### *Harbours*

28 Transfer of executive functions in relation to Welsh harbours

29 Transfer of executive functions: amendments of the Harbours Act 1964

30 Transfer of harbour functions: application of general provisions

31 Welsh harbours: reserved trust ports

32 Welsh harbours: development consent

33 Cross-border harbours

34 Cross-border exercise of pilotage functions

35 Regulations modifying the application of sections 32 and 33

#### *Planning for electricity generating stations*

36 Development consent for generating stations with 350MW capacity or less

37 Generating stations and public rights of navigation

38 Associated development of overhead lines

39 Alignment of associated development consent

#### *Equal opportunities*

40 Equal opportunities: public sector equality duty

41 Public sector duty regarding socio-economic inequalities

#### *Marine licensing and conservation*

42 Marine licensing in the Welsh offshore region

43 Marine conservation zones

#### *Miscellaneous*

44 Intervention in case of serious adverse impact on sewerage services etc

45 Transfer of functions in relation to excepted energy buildings

46 Renewable energy incentive schemes

### **Part 3**

#### **Miscellaneous**

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47 Provision of information to the Office for Budget Responsibility

48 Gas and Electricity Markets Authority

49 Licensing of coal-mining operations: approval by Welsh Ministers

50 Office of Communications

### **Part 4**

#### **General**

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51 Consequential provision

52 Transitional provision and savings

53 Commencement

54 Short title

Schedule 1 – New Schedule 7A to the Government of Wales Act 2006 [Reserved Matters]

Schedule 2 – New Schedule 7B to the Government of Wales Act 2006 [General Restrictions]

Schedule 3 – New Schedule 3A to the Government of Wales Act 2006 [Shared Ministerial Functions]

Schedule 4 – New Schedule 9A to the Government of Wales Act 2006 [Wales Public Authorities]

Schedule 5 – Minor and consequential amendments

Part 1 – Amendments of the Government of Wales Act 2006

Part 2 – Amendments of other Acts

Schedule 6 – Transitional provisions

Part 1 – Transitional provisions relating to the Assembly's legislative competence

Part 2 – Other transitional provisions